


CR 2019/4 - Fringe benefits tax: employer clients of Police Financial Services Limited, trading as BankVic, who are subject to the provisions of section 57A or 65J of the Fringe Benefits Tax Assessment Act 1986 that make use of the BankVic Meals and Entertainment Card

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Class Ruling

Fringe benefits tax: employer clients of Police Financial Services Limited, trading as BankVic, who are subject to the provisions of section 57A or 65J of the *Fringe Benefits Tax Assessment Act 1986* that make use of the BankVic Meals and Entertainment Card

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ⓘ This publication provides you with the following level of protection:

This publication (excluding appendices) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this Ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this Ruling if it turns out that it does not correctly state how the relevant provision applies to you.

Summary – what this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provisions identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provisions

2. The relevant provisions within this Ruling are:

- subsection 5B(1E) of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA)
- section 5C of the FBTAA
- paragraph 5E(3)(a) of the FBTAA
- paragraph 5E(3)(c) of the FBTAA

- Division 9A of Part III of the FBTAA
- section 37AD of the FBTAA
- section 38 of the FBTAA
- section 57A of the FBTAA
- section 65J of the FBTAA
- section 65J(2A) of the FBTAA
- subsection 136(1) of the FBTAA
- section 149A of the FBTAA.

All legislative references in this Ruling are to the FBTAA unless otherwise indicated.

Class of entities

3. The class of entities to which this Ruling applies are those employers, who are subject to the provisions of section 57A or section 65J, who enter into an arrangement, either directly or via a third party intermediary salary packaging administrator, with Police Financial Services Limited trading as BankVic (BankVic) to provide BankVic Meals and Entertainment card to their employer's employees and/or their employees' associates.

Qualifications

4. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.

5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 8 to 27 of this Ruling.

6. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled, and
- this Ruling may be withdrawn or modified.

Date of effect

7. This Ruling applies from 1 April 2018 to 31 March 2024. The Ruling continues to apply after 31 March 2024 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute

agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10 *Public Rulings*).

Scheme

8. The following description of the scheme is based on information provided by the applicant. The following documents, or relevant parts of them form part of and are to be read with the description:

- class ruling application dated 19 July 2018
- Salary Packaging Cards Services Agreement between BankVic and an employer
- Salary Packaging Cards Services Agreement between BankVic and a Salary Packaging Administrator
- application for Salary Packaging Card
- Salary Packaging Card Product Disclosure Statement
- Sample Salary Packaging Application Form and Terms and Conditions.

The cards facility

9. Participating employers wish to offer their employees, as a component of their salary packages, salary packaging meal and venue hire entertainment cards.

10. BankVic, has developed salary packaging cards for use by employees of Australian employer customers who will either self-administer the salary packaging or use a third party intermediary salary packaging administrator.

11. The BankVic Meals and Entertainment Card (Entertainment Card) is a debit card facility where the amount available is restricted to the value of the funds held at the relevant time for the cardholder in the card account.

12. Participating employers will be employers that are not-for-profit organisations, government entities, or other tax-exempt bodies who are subject to the provisions of either section 57A or section 65J.

13. Salary packaging administrators, acting on the employer's behalf, will enter into an arrangement with BankVic to provide the salary packaging card facility to participating employees of the employer.

14. Employees of participating employers who wish to take part may apply to BankVic to be provided with an Entertainment Card issued in the employee or a nominated associate's name (the Cardholder).

15. Cardholders use their Entertainment Card to pay for meal and venue entertainment purchases. Expenditure amounts from these transactions are limited to the funds available in the card account.

Funding

16. Participating employers will enter into valid salary sacrifice arrangements (SSAs) with their participating employees under which the employer will agree to contribute funds to the participating employees card account. Individual SSAs will be unique to each participating employer. The use of the Entertainment Card will form an integral part of those arrangements.

17. The SSAs in respect of Entertainment Cards specify that where the cards are validly used it is the participating employers who have the prime responsibility to pay the merchants or the services providers. As such the SSAs further state that the benefits provided to the Cardholders are the particular good and services supplied to the Cardholders.

18. BankVic will open accounts to hold funds deposited by a participating employer and relevant amounts from these funds will be transferred to each employee's card.

19. Contributions of funds to the Cardholder accounts will be as follows:

- a funds distribution file detailing the individual amounts salary sacrificed by each Cardholder will periodically be sent by the participating employers to BankVic
- BankVic will allocate the funds received across the relevant Cardholder accounts, and
- the funds will be added to the debit balance of the relevant card.

20. Funds in the Cardholder's account, while held for expenditure purposes, will remain the legal property of the employer.

Using the Entertainment Card

21. When the Cardholder uses the Entertainment Card to purchase meal or venue hire entertainment:

- the participating employer will incur a primary obligation to pay an amount to the merchant equal to the transaction amount
- the participating employer will acquire legal ownership of the relevant goods and services and they will immediately pass ownership to the Cardholder
- BankVic will settle the transaction by paying the transaction amount to the merchant

- as a result of the settlement referred to, the participating employer will incur an obligation to pay BankVic an amount equal to the transaction amount
- BankVic will apply funds from the account, which remains the property of the participating employer up to the time they are expended.

22. The benefit provided to the Cardholder are the particular goods and services supplied to the Cardholder.

23. The aggregate grossed-up value of both salary packaged meal entertainment and venue hire entertainment benefits provided via the Entertainment Card will not exceed the amount set out in step 4(a) of section 5B(1E) (currently \$5,000 per employee) per FBT year. Where meal entertainment amounts are salary packaged by the relevant employee through mechanisms other than the card product, the packaging limit on the relevant card will be adjusted down to ensure card expenditure is restricted to the above limit.

24. Cardholders will not be allowed to make direct debit payments using Entertainment Card funds.

25. The Entertainment Card can only be used for the purchase of:

- meal entertainment as defined in section 37AD, and/or
- entertainment facility leasing expenses as defined in subsection 136(1).

26. The Entertainment Card has a blocking mechanism which only allows it to be used on approved merchant categories. These merchants will be those who provide meal entertainment or hire of entertainment facilities.

Restrictions

27. The Entertainment Cards may be subject to merchant blocking depending on individual arrangement with employers; however, regardless of whether this is the case, the Cardholder will agree to the following restrictions on card use at the time of application:

- payments up to an employee's agreed salary sacrifice value can only be made to the Entertainment Card account by the employer
- Cardholders will only be permitted to transact on their card up to the balance of employer funds that are available
- Cardholders will be subject to an absolute prohibition on withdrawing any funds from salary packaging cards, cash advances, or transferring the balance of funds on the cards, deposits to card account (other than from their employer) under any circumstances, and

- Cardholders will only be permitted to transact on their entertainment card to a grossed up benefits amount that does not exceed the caps contained in section 5B.

Ruling

28. The use of the Entertainment Card for the acquisition of entertainment by way of food or drink, constituting meal entertainment, will be a tax-exempt body entertainment benefit under section 38.

29. The use of the Entertainment Card for the hire or lease of an entertainment facility will be a 'tax-exempt body entertainment benefit' under section 38.

Employers subject to section 57A

30. The provision of meal entertainment or the hire or lease of an entertainment facility by way of the Entertainment Card gives rise to an exempt benefit for a participating employer subject to the provisions of section 57A.

31. Benefits provided under a salary packaging arrangement that constitute the provision of meal entertainment or an entertainment facility leasing expense are an exempt benefit where the grossed-up taxable value does not exceed \$5,000. Any excess amount is included in the capping thresholds for the purposes of determining the employer's non-exempt amount under subsection 5B(1E) for an employer subject to the provisions of section 57A.

Employers subject to section 65J

32. The provision of meal entertainment or the hire or lease of an entertainment facility by way of the Entertainment Card may reduce the amount of rebate available to a rebatable employer under section 65J.

33. The provision of such benefits will form part of the employer's aggregate non-rebatable amount in the subsection 65J(2A) rebate calculation where the grossed-up taxable value of such benefits exceeds \$5,000. Any excess amount is included in the capping thresholds for the purposes of determining the employer's aggregate non-rebatable amount under subsection 65J(2A) for an employer subject to the provisions of section 65J.

34. The provision of meal entertainment or an entertainment leasing expense by way of the Entertainment card provides a rebate to the rebatable employer of the gross tax that would otherwise be payable as the provision of the benefits are included in the calculation of the amount of gross tax, for the purposes of the

subsection 65J(2A) rebate calculation, per subsections 5C(3) or 5C(4) as applicable.

35. A benefit will be a GST-creditable benefit if the requirements of section 149A are satisfied. Such a benefit will be a type 1 benefit for the purposes of section 5C. Where the requirements of this section are not satisfied, the benefit will not be a GST-creditable benefit and thus a type 2 benefit for the purposes of section 5C.

36. The provision of a meal entertainment or an entertainment facility leasing expense that is an exempt benefit under section 57A is not a GST-creditable benefit for the purpose of section 149A of the FBTA and will be a type 2 benefit.

Commissioner of Taxation

16 January 2019

Appendix 1 – Explanation

❶ *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

Types of benefits arising from the use of the Salary Packaging Entertainment Card

37. A fringe benefit is defined in subsection 136(1) as being a benefit that is provided by an employer or associate of the employer, to an employee or an associate of the employee, in respect of the employment of the employee.

38. When an employee uses the Entertainment Card at an approved merchant, an employee is able to use the card for either the acquisition of food or drink or to pay for the hire or lease of an entertainment facility.

39. Under the arrangement the participating employer acquires legal ownership of the purchases and incurs the primary obligation for all transactions to the merchant equal to the transaction amounts. The amounts owed to the merchants are met from the participating employer funds held in a participating employer's disbursement account and made available (loaded) on to the card.

40. This does not give rise to an expense payment benefit under section 20 as a participating employer does not discharge an obligation of an employee to pay a third party nor do they reimburse an employee in respect of expenditure they incur.

Meal entertainment

41. The expenditure on food or drink by an employee will come within the meaning of the phrase 'provision of meal entertainment' under section 37AD. That phrase, at paragraph 37AD(a), includes 'entertainment by way of food or drink'.

42. Section 37AD defines the meaning of the phrase 'provision of meal entertainment'. The section refers to:

- (a) the provision of entertainment by way of food or drink;
- (b) accommodation or travel in connection with, or for the purpose of facilitating entertainment to which paragraph (a) applies; or
- (c) the payment or reimbursement of expenses incurred in providing something covered by paragraph (a) or (b);

...

43. A 'tax-exempt body entertainment benefit' will arise under section 38 where an entity that is wholly or partly exempt from income tax incurs 'non-deductible exempt entertainment expenditure'.

44. The participating employers in the arrangement will be not-for-profit organisations, government entities or other tax-exempt bodies such as public benevolent institutions, health promotion charities, public hospitals and public ambulance services. These types of organisations are exempt from income tax.

45. In general terms, expenditure will be 'non-deductible exempt entertainment expenditure' if section 32-5 of the *Income Tax Assessment Act 1997* (ITAA 1997) would prevent an income tax deduction from being claimed for the expenditure if the entity incurring the expense was subject to income tax.

46. Section 32-5 of the ITAA 1997 states (as is relevant here)

To the extent that you incur a loss or outgoing in respect of providing *entertainment, you cannot deduct it under section 8-1. ...

47. Under paragraph 32-10(a) of the ITAA 1997, the meaning of 'entertainment', for the purposes of the FBTAA, includes 'entertainment by way of food, drink or recreation'.

48. Section 32-5 of the ITAA 1997 would apply in relation to the use of the card to purchase food or drink that constitutes 'meal entertainment'. The provision of such benefits will be 'non-deductible exempt entertainment expenditure'.

49. Therefore, the use of the Entertainment Card to purchase meal entertainment will be a 'tax-exempt body entertainment benefit' under section 38. An employer cannot make an election under Division 9A of Part III that 'entertainment by way of food or drink' be treated as 'meal entertainment benefits' rather than as any other kind of benefit for the purposes of the FBTAA. This is because meal entertainment provided under a salary packaging arrangement is specifically excluded from being a meal entertainment benefit under section 37AC. The elective valuation rules therefore cannot be used to calculate the taxable value of the benefit as it is not a meal entertainment fringe benefit. Consequently, the taxable value of the benefit provided is determined under section 39 as a 'tax-exempt body entertainment benefit'.

Entertainment facility leasing expenses

50. The term 'entertainment facility leasing expenses' is defined in subsection 136(1) as:

entertainment facility leasing expenses for a person, means expenses incurred by the person in hiring or leasing:

- (a) a corporate box; or
- (b) boats, or planes, for the purpose of the provision of entertainment; or
- (c) other premises, or facilities, for the purpose of the provision of entertainment;

but does not include so much of any of such expenses that:

- (d) is attributable to the provision of food or drink; or
- (e) is attributable to advertising and is an allowable deduction for the person under the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997*.

51. The expenditure on hire or lease of an entertainment facility in this instance will come within the meaning of 'entertainment facility leasing expenses' under subsection 136(1).

52. A 'tax-exempt body entertainment benefit' will arise under section 38 where the participating employer is wholly or partly exempt from income tax and section 32-5 of the ITAA 1997 would prevent the employer from claiming an income tax deduction for the expenditure if it were subject to income tax.

53. The meaning of 'entertainment' includes entertainment by way of recreation in paragraph 32-10 (1)(a) of the ITAA 1997. Subsection 995-1 of the ITAA 1997 defines the term 'recreation' to include 'amusement, sport or similar leisure-time pursuits'. While the term 'recreation' is defined, the words 'entertainment by way of recreation' are not defined. As these words are not defined, they have their natural meaning, taken in the context in which they appear in the legislation.

54. The term 'entertainment', which is the key to the operation of relevant words, is defined in the Macquarie Dictionary, on-line edition, to mean:

- 1 the act of entertaining; agreeable occupation for the mind; diversion, or amusement
- 2 something affording diversion or amusement, especially an exhibition or performance of some kind
- 3 hospitable provision for the wants of guests.

55. Further, Taxation Determination TD 94/55 *Income tax: when does providing an item of property constitute the provision of entertainment within the meaning of subsection 32-10(1) of the Income Tax Assessment Act 1997?* states that in determining whether providing an item of property constitutes entertainment, regard should be given to the character of the entertainment to be derived from the item of property provided.

56. Specifically, in *Example 2* in TD 94/55, costs incurred in providing holiday accommodation are incurred in providing property that would constitute the provision of entertainment.

57. It is considered, therefore, that where an entertainment facility is hired or leased, the hire or lease costs are incurred for the purposes of the provision of 'entertainment' as that latter term is defined in subsection 32-10(1) of the ITAA 1997.

58. Consequently, the use of the Entertainment Card to pay for the hire or lease of an entertainment facility will be a 'tax exempt body entertainment benefit' under section 38.

Transfer of funds

59. Deposits by participating employers into the disbursement accounts do not constitute the provision of a 'benefit' as that term is defined in subsection 136(1), as the participating employers are merely transferring funds to their own accounts with the financial institution. It is considered that this view is not altered by the fact that such deposits into the employers' accounts are steps in the furtherance of the terms of the salary sacrifice arrangements.

60. Similarly, the pre-loading of funds onto the cards is merely the transfer of participating employer funds and no 'benefit' is provided to the employees at the time of that transfer.

Employers subject to section 57A who participate in the arrangement

61. Section 57A provides that certain employers are generally exempt from FBT. This section applies to employers that are registered as a charity and endorsed as a public benevolent institution or health promotion charity, certain hospitals and an employer who provides public ambulance services (or services that support those services) where the employee is predominantly involved in connection with the provision of those services, or a registered and endorsed health promotion charity.

62. The exemption in section 57A also applies to benefits provided to an employee of a government body where the duties of employment are exclusively performed in, or in connection with, certain hospitals.

63. However, these exemptions are subject to the capping provisions in section 5B.

64. Subsection 5B(1E) limits the exemption to a general capping threshold on each employee's individual grossed-up non-exempt amount (that is, the total grossed-up taxable value of benefits not otherwise exempt) for the particular FBT year. For the FBT year commencing on 1 April 2018, and subsequent FBT years, this threshold is \$17,000 for each employee for employers who are public or non-profit hospitals, or who provide a public ambulance service. This threshold also applies in respect of employees of a government body whose duties are exclusively performed in, or in connection with, a public or non-profit hospital. Such employers are liable for full FBT on the grossed-up taxable value of benefits provided in excess of this threshold.

65. All other employers to which section 57A applies will have a capping threshold of \$30,000 for each employee for the FBT year commencing on 1 April 2018 and subsequent FBT years. These employers are liable for FBT on the grossed-up taxable value of benefits provided in excess of this threshold.

66. If the employee's individual grossed-up non-exempt amount is greater than the capping threshold, an employer may further reduce the amount under step 4 of the Method Statement in subsection 5B(1E) by the lesser of \$5,000 and so much of the employee's individual grossed-up non-exempt amount that relates to salary packaged meal entertainment and entertainment facility leasing expenses under subsection 5B(1M). The latter amount, for the purposes of subsection 5B(1M) includes the provision of meal entertainment or entertainment facility leasing expenses made through the use of the Entertainment Card.

67. Each employee's individual grossed-up non-exempt amount is determined by multiplying the employee's type 1 and type 2 individual base non-exempt amounts by the applicable gross-up rate. Step 1 of the Method Statement contained in subsection 5B(1L) does not specifically disregard the taxable value of benefits provided under a salary packaging arrangement that constitutes 'meal entertainment', as that term is defined in section 37AD, or those which are wholly or partially attributable to 'entertainment facility leasing expenses' in determining an employee's individual base non-exempt amount. This is because such benefits are not excluded fringe benefits for the purposes of paragraphs 5E(3)(a) or 5E(3)(c).

68. Consequently, the use of the card to purchase meal entertainment or to pay for the hire or lease of an entertainment facility may form part of any participating employer's aggregate non-exempt amount in the exemption calculation where the grossed-up taxable value of such benefits exceeds \$5,000, and the excess amount when added to the grossed-up taxable value of other benefits provided to an employee exceeds the relevant general capping threshold.

69. The total grossed-up value of benefits will be restricted to \$5,000 per employee, per FBT year, and therefore purchases via the Entertainment Card will not be subject to FBT.

Employers subject to section 65J who participate in the arrangement

70. Section 65J provides that certain non-government and non-profit organisations (rebatable employers) are entitled to have their FBT liability reduced by a rebate. This section does not apply to public benevolent institutions or to registered health promotion charities.

71. If an employer is a rebatable employer, the employer is entitled to a rebate of tax in the employer's assessment for the year of tax concerned equal to the amount worked out using the relevant formula in subsection 65J(2A). The relevant formula depends upon the year in which the benefit is provided. For the FBT year commencing 1 April 2018, if the employer is a rebatable employer for the full year, the rebate (provided the capping threshold is not exceeded) will be 47% of the amount of the gross tax that would

otherwise be paid by the employer. In subsequent years, the amount of the rebate will be determined by multiplying the FBT rate for the relevant FBT year by the amount of tax that would otherwise be paid by the employer (provided the capping threshold is not exceeded).

72. If the total grossed-up taxable value of benefits provided to an individual employee exceeds the relevant threshold, the rebate will not apply to the tax that arises on the excess amount. That is, the rebate will only apply to the tax that would otherwise be paid up to the amount of the threshold. The amount of this threshold depends upon the FBT year in which the benefit is provided. For the year commencing 1 April 2018 and subsequent years, the threshold is \$30,000 grossed-up taxable value per employee.

73. The amount of gross tax is the amount of tax that would be payable on the fringe benefits taxable amount of the rebatable employer assuming that section 65J had not been enacted.

74. The rebatable employer's aggregate non-rebatable amount is calculated by aggregating the product of each employee's individual grossed-up non-rebatable amount less the capping threshold, as set out in step 2 of the Method Statement in subsection 65J(2B), by the lesser of \$5,000 and so much of the employee's individual grossed-up non-rebatable amount that relates to salary packaged meal entertainment and entertainment facility leasing expenses under subsection 65J(2J) (that is, the amount of the meal entertainment or entertainment facility leasing expenses provided through use of the Entertainment Card), as set out in step 2A of the Method Statement in subsection 65J(2B). If the amount is greater than nil it is multiplied by the FBT rate.

75. Each employee's individual grossed-up non-rebatable amount is determined by multiplying the employee's type 1 and type 2 individual base non-rebatable amounts by the applicable gross-up rate. Step 1 of the Method Statement contained in subsection 65J(2H) does not disregard the taxable value of benefits provided under a salary packaging arrangement that constitutes 'meal entertainment', as that term is defined in section 37AD, or those which are wholly or partially attributable to 'entertainment facility leasing expenses' in determining an employee's individual base non-rebatable amount. This is because such benefits are not excluded fringe benefits for the purposes of paragraphs 5E(3)(a) or 5E(3)(c).

Will benefits arising from the use of the Entertainment Card be type 1 or type 2 benefits?

76. A participating employer, receives information on the usage of each card from BankVic at the end of the FBT year. This information would enable a participating employer to distinguish between taxable, GST-free and input taxed supplies.

77. The distinction between type 1 or type 2 benefits is set out in section 5C:

- a type 1 benefit is a fringe benefit that is a 'GST-creditable benefit' as defined in section 149A
- a type 2 benefit is a fringe benefit that is not a type 1 benefit.

78. Taxation Ruling TR 2001/2 *Fringe benefits tax: the operation of the new fringe benefits tax gross-up formula to apply from 1 April 2000* provides that, for the purposes of section 149A, a GST-creditable benefit arises where the provider of a fringe benefit is entitled to an input tax credit either:

- for the provision of that fringe benefit by the operation of Division 111 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act), or
- where the fringe benefit is a 'thing' acquired or imported by the provider, and the provider is entitled to an input tax credit because of that acquisition or importation of the thing.

79. Division 111 of the GST Act allows an entity to obtain input tax credits for fringe benefits that are expense payment benefits. This arrangement does not give rise to an expense payment benefit; hence Division 111 of the GST Act does not apply.

80. Whether a tax-exempt body entertainment benefit will be type 1 or type 2 benefit will depend on whether the participating employer (as provider) is entitled to input tax credits for the 'thing' acquired.

81. Where the 'thing' acquired by the participating employer is a taxable supply it is a creditable acquisition and where the 'thing' acquired by the employer is not a taxable supply it is not a creditable acquisition.

82. Benefits of the underlying goods and services provided to Cardholders arising from the use of Entertainment Cards will be GST-creditable benefits if the employer is entitled to an input tax credit because of the acquisition of those goods and services. The requirements of section 149A will be satisfied and the benefits will be type 1 benefits for the purposes of section 5C.

83. Benefits of the underlying goods and services provided to Cardholders arising from the use of Entertainment Cards will not be GST-creditable benefits if the employer is not entitled to an input tax credit because of the acquisition of those goods and services. The requirements of section 149A will not be satisfied and the benefits will be type 2 benefits for the purposes of section 5C.

84. One of the conditions which prevent an entitlement to an input tax credit for an acquisition by an employer is the application of the special rules set out in Division 69 of the GST Act.

85. Division 69 limits input tax credits for certain acquisitions and importations, including entertainment, to the extent that they would

not be deductible expenditure under certain provisions of the ITAA 1997.

86. Section 32-5 of the ITAA 1997 denies a deduction for entertainment under section 8-1 of that Act. However, section 32-20 of the ITAA 1997 allows an exception where entertainment is provided by way of a fringe benefit.

87. Benefits provided by employers subject to section 57A are exempt benefits. As an exempt benefit is not a fringe benefit, the fringe benefit exception rule in section 32-20 of the ITAA 1997 does not apply. This means that subsection 69-5(3) of the GST Act can apply to these employers.

88. In these circumstances the employer is not entitled to an input tax credit because the benefit arising from the use of the Entertainment Card is an exempt benefit and not a fringe benefit.

89. The requirements of section 149A of the FBTAA are not satisfied and so the benefits of the underlying goods and services provided to Cardholders arising from the use of Entertainment Cards will not be GST-creditable benefits and thus will be type 2 benefits for the purposes of section 5C of the FBTAA.

Appendix 2 – Detailed contents list

90. The following is a detailed contents list for this Ruling:

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

GSTR 2001/3; TD 94/55;
TR 2001/2; TR 2006/10

Legislative references:

- ANTS(GST)A 1999
 - ANTS(GST)A 1999 Div 69
 - ANTS(GST)A 1999 69–5(3)
 - ANTS(GST)A 1999 Div 111
 - FBTAA 1986
 - FBTAA 1986 5B
 - FBTAA 1986 5B(1E)
 - FBTAA 1986 5B(1L)
 - FBTAA 1986 5B(1M)
 - FBTAA 1986 5C
 - FBTAA 1986 5C(3)
 - FBTAA 1986 5E(3)(a)
 - FBTAA 1986 5E(3)(c)
 - FBTAA 1986 5C(4)
 - FBTAA 1986 20
 - FBTAA 1986 Pt III Div 9A
 - FBTAA 1986 37AC
 - FBTAA 1986 37AD
 - FBTAA 1986 37AD(a)
 - FBTAA 1986 38
 - FBTAA 1986 39
 - FBTAA 1986 57A
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 - FBTAA 1986 65J(2A)
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 - FBTAA 1986 65J(2H)
 - FBTAA 1986 65J(2J)
 - FBTAA 1986 136(1)
 - FBTAA 1986 149A
 - ITAA 1936
 - ITAA 1997
 - ITAA 1997 8–1
 - ITAA 1997 32-5
 - ITAA 1997 32–10(a)
 - ITAA 1997 32-10(1)
 - ITAA 1997 32-10(1)(a)
 - ITAA 1997 32–20
 - ITAA 1997 995-1
 - TAA 1953
-

ATO references

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